

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

FOREST A. EUBANK	§	PLAINTIFF
	§	
v.	§	Civil Action No. 1:10cv163-LG-RHW
	§	
CAMBRIDGE GALAHER MEDICAL;	§	
KAARA L. LIND; GINA BARDWELL	§	
TOMPKINS; JAMES R. FOSTER;	§	
JODI CARLESIMO; and PAGE,	§	
MANNINO, PERESICH,&	§	
McDERMOTT, PLLC	§	DEFENDANTS

**ORDER DISMISSING CASE FOR LACK OF
SUBJECT MATTER JURISDICTION**

THIS MATTER IS BEFORE THE COURT *sua sponte* for the purpose of determining whether this Court has subject matter jurisdiction. Upon reviewing the record in this matter and the applicable law, the Court finds that it does not have subject matter jurisdiction over this lawsuit and that this lawsuit must be dismissed.

DISCUSSION

This lawsuit was filed by a *pro se* plaintiff who claims to have suffered damages as a result of the defendants' handling of a workers' compensation claim. The parties have each provided briefs to the Court regarding their citizenship and regarding whether subject matter jurisdiction exists over this lawsuit.

28 U.S.C. § 1331 provides that district courts have original jurisdiction over all actions arising under the Constitution, laws, or treaties of the United States. The Court has reviewed both the original complaint and the amended complaint, and it appears that the plaintiff is only asserting state law claims, such as legal malpractice,

fraud, deceit, infliction of emotional distress, and reckless disregard. Furthermore, neither the plaintiff nor any of the defendants have identified any possible claims in either complaint that arise under the Constitution, laws, or treaties of the United States. Therefore, federal question jurisdiction does not exist.

28 U.S.C. § 1332 confers federal diversity jurisdiction over civil actions where the matter in controversy exceeds the sum or value of \$75,000, and the civil action is between citizens of different states. The plaintiff, Eubank, appears to be a resident of Biloxi, Mississippi, and the following defendants are also residents of Mississippi: Kaara Lind, Jay Foster, Gina Tompkins, and Page, Mannino, Peresich & McDermott, P.L.L.C. As a result, diversity of citizenship does not exist in this lawsuit. Rule 12(h)(3) of the Federal Rules of Civil Procedure provides: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." As a result, this Court must dismiss this lawsuit for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED AND ADJUDGED that this lawsuit is hereby **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

SO ORDERED AND ADJUDGED this the 22nd day of October, 2010.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE